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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JON HART, On Behalf of Himself and All
Others Similarly Situated, and On Behalf of the
12 General Public,

13 Plaintiff,

14 vs.

15 COMCAST OF ALAMEDA, INC., *et al.*; and
DOES 1-250,

16 Defendants.
17

) Case No. C-07-06350 PJH

) **PLAINTIFF'S REQUEST FOR**
) **JUDICIAL NOTICE IN OPPOSITION**
) **TO DEFENDANTS' MOTION FOR**
) **JUDGMENT ON THE PLEADINGS**

) Date: June 18, 2008

) Time: 9:00 a.m.

) Dept: Courtroom 3

) Judge: Hon. Phyllis Hamilton
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1 Plaintiff Jon Hart ("Plaintiff") hereby requests that the Court take judicial notice
2 of the following documents. This request is made pursuant to Federal Rule of Evidence Rule
3 201 and in connection with Plaintiff's Opposition to Defendants' Motion for Judgment on the
4 Pleadings.

5 1. Defendants' Terms and Conditions, a true and correct copy of which is attached
6 hereto as Exhibit 1.

7 2. Defendants' Subscriber Agreement, a true and correct copy of which is attached
8 hereto as Exhibit 2.

9
10 Dated: May 7, 2008

LEXINGTON LAW GROUP, LLP

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13 /s/ Mark N. Todzo
14 Mark N. Todzo
Attorneys for Plaintiff
JON HART
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EXHIBIT 1

Terms and Conditions

1. Comcast High-Speed Internet service tiers range from 4.0 to 16.0 Mbps download speed (maximum upload speed from 384Kbps to 768Kbps respectively). The speed tier received and pricing will vary depending upon the speed tier selected and the level of Comcast video service and/or digital telephone service (if any) received. Speed comparisons are for downloads only and are compared to (as applicable, to 56K dial-up, 768Kbps, 1.5Mbps or 3.0Mbps DSL). Actual speeds may vary and are not guaranteed. Many factors affect speed.

Equipment (including cable modem) is required and unless specifically included in the offer, must be rented at Comcast's regular rates or purchased at retail. May not be combined with any other discount or offer. Prices shown do not include applicable taxes and fees. Service is subject to terms and conditions of Comcast High-Speed Internet Subscriber Agreement and Home Networking Amendment if applicable. For restrictions, minimum requirements and details about service and prices, call 1-800-Comcast. ©2007 Comcast. All rights reserved. Video Mail not compatible with Macintosh systems, and additional equipment is required.

Comcast Home Networking will let you connect up to 5 PCs (IP devices) to the Internet at one time. Computers using a wireless connection must be within 150 feet of the gateway. Certain devices using radio frequency (including 2.4GHz cordless phones and microwave ovens), may interfere with or disrupt Internet connections. Comcast Home Networking service is only available to Comcast High-Speed Internet customers. Please note: the File and Printer Sharing Interface neither supports interaction between Apple and Windows based computers, nor sharing between two or more Apple devices. Regular service and equipment charges apply. Equipment, including a Comcast Certified Home Networking Device which may be purchased from Comcast or leased at Comcast's standard rates (currently \$5 per month) required. Leased equipment must be returned to Comcast if service is cancelled. Additional equipment may be required. You will have the ability to add four additional PCs for a total of five networked PCs per household. Wireless cards are required for additional connections beyond the first computers. Wireless cards may be purchased from Comcast (see rate card for pricing) or at retail. Installation charges are additional.

Close Window ➤

EXHIBIT 2



Comcast High-Speed Internet Service Subscriber Agreement

Effective February 14, 2003, Comcast has revised the Comcast High-Speed Internet Service Subscriber Agreement. We encourage you to read the entire agreement and to check this page periodically for any changes or updates. Please note that the revised agreement contains a mandatory and binding arbitration provision in Section 9 that affects your rights under the agreement.

Comcast High-Speed Internet service (the "Service") will be provided to you ("you," "your," or "Customer") on the terms and conditions set forth in this Subscriber Agreement (the "Agreement") by the operating company subsidiary of Comcast Corporation that owns and/or operates the cable television system in your area pursuant to a cable television franchise with the local franchising authority ("Comcast," "we," "us," or "our"). For purposes of this Agreement, "affiliate" means any entity that controls, is controlled by or is under common control with Comcast Corporation.

1. Equipment; Access.

- a. **Required Equipment:** You understand and agree that the Service requires certain equipment provided by you such as a personal computer, an Ethernet device, if required, and an appropriate operating system (the "Customer Equipment"), as well as certain equipment provided by Comcast or its designee such as software and external wiring and related electronic equipment installed by Comcast up to the point twelve inches from where the wiring enters your residence ("Comcast Equipment"). If you are leasing a cable modem from us, the cable modem is Comcast Equipment. If you have purchased a cable modem (whether from us or from a third party) the cable modem is Customer Equipment. If you purchase your own cable modem, it must meet the DOCSIS compatibility requirements established by CableLabs, Comcast, and its underlying providers. Comcast reserves the right to provide the Service only to the extent that you use a cable modem compatible with the Service. Whether the cable modem is owned by you or us, we have the unrestricted right, but not the obligation, to upgrade or change the firmware in the cable modem at any time that we, in our sole discretion, determine is necessary or desirable. We may perform these upgrades or changes remotely or on the Premises as we determine in our sole discretion.
- b. **Access to Customer's Premises:** You authorize Comcast and its employees, agents, contractors, and representatives to enter your premises at which the Service will be accessed (the "Premises") in order to install, maintain, inspect, repair and remove the Comcast Equipment and any equipment used in connection with the Service. All such access will occur at a time agreed to with you. You warrant that you are the owner of, or a tenant in, the Premises, and that you have the authority to enter into this Agreement. If you are not the owner of the Premises, upon request, you will supply us with the owner's name and address, evidence that you are authorized to grant access to the Premises on the owner's behalf and (if requested by Comcast) written consent from the owner of the Premises. You agree to indemnify, defend and hold harmless Comcast and its affiliates and agents against all claims and expenses (including reasonable attorney fees) arising out of any breach of this Section 1(b).

- c. **Comcast Equipment:** The Comcast Equipment will at all times remain the property of Comcast or its designee. You acknowledge that the Comcast Equipment is merely a means through which the Service is provided by us and may be removed or changed by us at our discretion as we deem appropriate, including through "downloads" to your computer(s) or otherwise. You agree not to use the Comcast Equipment for any purpose other than to use the Service pursuant to this Agreement. During the term of this Agreement, Comcast will repair and maintain all Comcast Equipment and you agree that the Comcast Equipment will not be serviced by anyone other than Comcast employees or agents. You shall not sell, transfer, lease, encumber or assign all or part of the Comcast Equipment to any third party. You will not relocate the Comcast Equipment. At your request, we may, at an additional charge, relocate the Comcast Equipment within the Premises at a time agreed to with you. If you change residences or disconnect your Service, you must contact Comcast for additional information concerning disconnecting the Service, the possibility, costs and procedures for transferring the Comcast Equipment and Service to your new residence. You shall pay to Comcast the full manufacturer's suggested retail price for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Comcast Equipment or part thereof, together with any incidental costs incurred by us relating to the replacement of the Comcast Equipment or part thereof.
- d. **Customer Equipment:** You represent that you own the Customer Equipment or otherwise have the right to use such equipment in connection with the Service. Comcast shall have no obligation to provide, maintain or service the Customer Equipment. The current minimum technical and other requirements for Customer Equipment (including without limitation required computer hardware) in connection with the Service are posted on the Service's web site at www.comcast.net or on another web site about which you have been notified. These minimum requirements may be revised by us from time to time. If you proceed with the installation of or use the Service in conjunction with Customer Equipment that does not meet the minimum requirements (a "Non-Recommended Configuration"), you agree that (i) you will not be entitled to customer support relating to any issues other than the quality of the signal delivered to the cable modem, and (ii) the following limitation of liability shall apply: NEITHER COMCAST NOR ANY OF ITS AFFILIATES OR AGENTS WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE YOU TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICE. YOU ACKNOWLEDGE THAT ANY SUCH INSTALLATION, ACCESS, OPERATION OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT, INCLUDING WITHOUT LIMITATION CUSTOMER'S COMPUTER, PERIPHERALS, SOFTWARE OR DATA. NEITHER COMCAST NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

2. Intellectual Property Rights.

- a. **End User Licenses:** You agree to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed or used in connection with the Service including, without limitation, the Comcast Software License Agreement, the current version of which is attached to this Agreement as Exhibit A, as these agreements may be amended from time to time. All such agreements are incorporated in this Agreement by reference. All end user licenses will terminate upon the termination of this Agreement, and, at such time, you shall destroy all versions and copies of all software received by you in connection with the Service.
- b. **Ownership of Addresses:** You acknowledge that use of the Service does not give you any ownership or other rights in any Internet/on-line addresses provided to you, including

but not limited to Internet Protocol ("IP") addresses, e-mail addresses and web addresses. We may modify or change these addresses at any time without notice and shall in no way be required to compensate you for these changes.

- c. **Authorization:** Comcast does not claim any ownership of any material that you publish, transmit or distribute using the Service. By using the Service to publish, transmit or distribute material or content, you (i) warrant that the material or content complies with the provisions of this Agreement, (ii) consent to and authorize Comcast, its agents and affiliates to reproduce, publish, distribute, and display the content worldwide and (iii) warrant that you have the right to provide this authorization. You acknowledge that material posted or transmitted using the Service may be copied, republished or distributed by third parties, and you agree to indemnify, defend and hold harmless Comcast, its agents and affiliates for any harm resulting from these actions.
- d. **Copyright in the Service:** Title and intellectual property rights to the Service are owned by Comcast, its agents, suppliers or affiliates or their licensors or otherwise by the owners of such material and are protected by copyright laws and treaties. The copying, redistribution, reselling or publication of any part of the Service without express prior written consent from Comcast or other owner of such material is prohibited.
- e. **Material Downloaded from the Service:** In addition to any content that may be provided by us, you may access material through the Service that is not owned by Comcast. Any such material may be downloaded from the Service only for your personal, non-commercial use, and you are not allowed to redistribute that material over any network (other than a residential home network located in the Premises) or sell or offer for sale that material. Unless other terms and conditions expressly apply to specific content, you may make: (a) one machine readable copy, (b) one backup copy, and (c) one print copy of any material downloaded from the Service; any other copying, or any redistribution or publication of any downloaded material, including, without limitation, posting to any other online service, must be with the express permission of the relevant copyright holder. In any permitted copying, redistribution or publication of copyrighted material, any changes to or deletion of any copyright notice are prohibited. Other terms and conditions may apply to your use of any content or material made available through the Service that is not owned by Comcast. You should read those terms and conditions to learn how they apply to you and your use of any non-Comcast content.

3.

- a. **Fees and Charges:** You agree to pay all charges and fees associated with the use of the Service, which charges may include, without limitation, monthly service fees, charges for the use of Comcast Equipment, installation charges, charges for service calls and other charges. In addition, you agree to pay all applicable federal, state and local fees and taxes. A copy of the fees and charges applicable on the date of installation of the Service were delivered or available to you at the time of installation. You acknowledge receipt of this price list. The current applicable schedule of fees and charges is posted on the Service's web site at www.comcast.net or on another web site about which you have been notified. Comcast shall have the right to change the amount of fees and charges from time to time at its discretion and upon reasonable advance notice. Monthly service, equipment and other fees shall be payable monthly in advance. Installation and other charges will be billed according to our then current billing policies. Your Comcast invoice may also contain charges for other services provided by us or our subsidiaries or affiliates. If we receive partial payment of any such invoices, we will apply such payment in the amounts and proportions to the outstanding charges as we determine. Our acceptance of any partial payment by you does not mean that we waive our rights to collect the full balance owed to us.

- b. **Credit Card:** If authorized by you, Comcast shall charge all amounts payable by you to Comcast pursuant to this Agreement to your credit card in accordance with the credit card information provided by you. By providing a credit card number to us, you authorize us to continue charging the credit card for all monthly fees (including without limitation monthly service fees and equipment charges, as well as applicable taxes and fees) payable to Comcast, and any other charges incurred by you and payable to Comcast pursuant to this Agreement, until this Agreement is terminated. Monthly service fees and equipment fees may be charged up to thirty (30) days in advance of the first day of the month for which the charges relate. You agree to inform us immediately of any change in credit card information (including without limitation a change in expiration date). Your card issuer agreement governs use of the credit card in connection with the Service, and you must refer to that agreement with respect to your rights and liabilities as a cardholder. If Comcast does not receive payment from your credit card issuer or its agents, you agree to pay all amounts due upon demand by us.
- c. **Late Payments; Failure to Pay:** You agree to pay Comcast, as set forth in this Agreement, for any fees or charges due to Comcast, including any administrative late fee(s) and related fees, charges and assessments due to late payments or non-payments. If Comcast does not receive any required payment from you by the date on which the payment is due, or you pay less than the full amount due Comcast where we provide more than one product or service to you, you may be charged such fees, charges and assessments and the Service may be disconnected. If the Service is disconnected, in addition to the rights and remedies of Comcast under this Agreement or otherwise, you may be required to pay a reconnect fee in addition to all past due charges before the Service is reconnected. Any administrative late fee(s) and related fees, charges and assessments due to late payment and nonpayment are not penalties. Rather, they are liquidated damages intended to be a reasonable advance estimate of our costs resulting from late payments or non-payments by our customers, which costs will not be readily ascertainable, and will be difficult to predict or calculate, at the time that such administrative late fee(s) and related charges are set because it would be difficult to know in advance: (a) whether you will pay for the Service on a timely basis, (b) if you do pay late, when you will actually pay, if ever, and (c) what costs we will incur because of your late payment or non-payment. Comcast will inform you of the amount of these fees and other separate or additional charges by posting notice of such charges on the Service's web site at www.comcast.net or on another web site about which you have been notified, or by sending notice via e-mail or first class U.S. postal mail to your address of record or e-mail address on our account records, prior to Comcast assessing any new or changed fees. You may avoid these fees and other separate or additional charges relating to late payment and non-payment by complying with the payment provisions of this Agreement and by complying with Comcast's current billing policies. If you fail to pay for the Service when due (because of a failure to comply with the payment provisions of this Agreement or for any other reason), you agree to voluntarily pay all administrative late fee(s) and related fees, charges and assessments due to late payment and non-payment. Comcast does not anticipate that you will fail to pay for the Service on a timely basis. We do not extend credit to customers and the administrative fee(s), related fees, charges and assessments are not interest, a credit service charge or a finance charge. Comcast's late fee practices may be revised to comply with applicable state or local laws, rules or regulations. If we are required to use a collection agency or attorney to collect money owed by you or to assert any other right that we may have against you, you agree to pay the reasonable costs of collection or other action. These costs might include, but are not limited to, the costs of a collection agency, reasonable attorneys' fees and arbitration or court costs.
- d. **Additional Charges:** The Service will allow you to access the Internet, content providers, providers of services, on-line services and other information. You acknowledge that you may incur charges on account of such access or usage through the Service separate and

apart from the amounts charged by us. In addition, you may incur charges as a result of accessing on-line services or purchasing or subscribing to other offerings via the Internet or otherwise. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. In addition, you are solely responsible for protecting the security of credit card information provided in connection with such transactions.

- e. **Alternate Billing Arrangements:** In certain cases, Comcast may agree to provide billing services on behalf of content providers, service providers or other third parties. If such billing services are provided by Comcast, we shall be acting as the agent of the third party. Any such third party charges shall be payable pursuant to any contract or other arrangement between you and the third party. We shall not be responsible for any dispute regarding these charges between you and any third party for whom Comcast bills. You must address all such disputes directly with the third party.
- f. **Credit Inquiries:** You authorize Comcast to make inquiries and to receive information about your credit experience from others, enter this information in your file, and disclose this information concerning you to appropriate third parties for reasonable business purposes.
- g. **Billing Errors:** Subject to applicable law, you must notify us of any billing errors or other requests for refund within sixty (60) days of the date on which the error occurred.
- h. **Account Access:** In order to protect the privacy of your account information, we may require that you use a security code, designated in accordance with our policies, to confirm your identity when requesting or otherwise accessing account information, making changes to the Service or performing other functions related to the Service.

4. Customer Information and Privacy

- a. **Customer Privacy:** Your privacy interests, including your ability to limit disclosure of certain information to third parties, is described in the Comcast High-Speed Internet Privacy Policy which we delivered to you at the time of the original installation of the Service, and will deliver to you annually as long as you receive the Service. You acknowledge your receipt of the Comcast High-Speed Internet Privacy Policy and your express consent to the terms of that privacy policy.
- b. **Information Provided To Third Parties:** The Service will allow you to access third parties, including without limitation, content providers, on-line services and other providers of goods, services and information. Some of these goods, services and information may be accessible directly from the Service, and others may be accessible from the third parties referenced above. In connection with this third party access, you may be requested or required to provide your name, address, telephone number, credit card number and other personally identifiable information to such third parties. Comcast is not responsible for any such information provided by you to third parties, and this information is not subject to the privacy provisions of this Agreement or the. You assume all privacy and other risks associated with providing personally identifiable information to third parties via the Service. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

5. Acceptable Use Policy; Prohibited Uses of the Service

- a. **Acceptable Use Policy:** You expressly agree not to use the Comcast Equipment or the Service, directly or indirectly, to undertake or accomplish any unlawful purpose or in violation of any posted Comcast policy applicable to the Service, including without

limitation any Comcast Acceptable Use Policy (the "AUP") or other policy posted on the Service's web site at www.comcast.net or on another web site about which you have been notified, and that the AUP or other policy may be modified by Comcast from time to time. Notwithstanding anything to the contrary in this Agreement, you acknowledge and agree that the terms of the AUP and any other applicable Comcast policies may be put into effect or revised from time to time without notice by posting a new version of the AUP or the other policy as set forth above. Accordingly, you and other users of the Service should consult the AUP and all other posted policies regularly to conform to the most recent version.

- b. **Prohibited Uses of the Service:** Use of the Comcast Equipment or the Service for transmission or storage of any information, data or material in violation of any federal, state or local law or regulation is prohibited. In addition, unless you are subject to a Service plan that expressly permits otherwise, the Service is to be used, and you expressly agree to use it, solely in a private residence, living quarters in a hotel, hospital, dormitory, sorority or fraternity house, or boarding house, or the residential portion of a premises which is used for both business and residential purposes. Without limiting the generality of the foregoing, the Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider, a server site for ftp, telnet, rlogin, e-mail hosting, "web hosting" or other similar applications, for any business enterprise, or as an end-point on a non-Comcast local area network or wide area network.

6. Representations and Warranties of Customer. You represent and warrant that

- a. **Age:** You are at least 18 years of age.
- b. **Customer Information:** The Customer information that you have provided and will provide to Comcast during the term of this Agreement, including without limitation your legal name, address, telephone number(s), the number of computers on which the Service is being accessed and payment data (including without limitation credit card numbers and expiration dates) is accurate, complete and current. You agree to promptly notify us, in accordance with the terms of this Agreement, if there is any change in the information that you have provided to us. Failure to provide and maintain accurate information constitutes a breach of this Agreement.
- c. **Multiple Users:** The Service and the Comcast Equipment shall be used only by you and by members of your immediate household living with you at the same address. You acknowledge that you are executing this Agreement on behalf of all persons who use the Comcast Equipment and/or Service by means of the Customer Equipment. You shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement. You further acknowledge and agree that you are solely responsible for and liable for any and all breaches of the terms and conditions of this Agreement, whether the breach is the result of use of the Service and/or the Comcast Equipment by you or by any other user of the Customer Equipment. You agree to indemnify, defend and hold harmless Comcast and its affiliates and agents against all claims and expenses (including reasonable attorney fees) arising out of the use of the Service and/or the Comcast Equipment or the breach of this Agreement by you or any other user of the Customer Equipment.
- d. **Export Laws:** You will comply with all export and re-export control laws, including but not limited to the Export Administration Act, the Arms Export Control Act and their implementing regulations, and you will not transfer, by electronic transmission or otherwise, any content derived from the Service to either a foreign national or a foreign destination without first obtaining any required government authorization. You further

agree not to upload to the Service any data or software that cannot be exported without prior written government authorization. The terms "export" and "re-export" mean transferring or releasing technology to another country or to a national of another by any means - physical, electronic or otherwise. This includes the electronic transmission of information and software to foreign countries and to certain foreign nationals.

- e. **No Tampering:** You will not service, alter, modify or tamper with the Comcast Equipment or with the Service, or permit any other person (unless authorized by Comcast) to do so. This prohibition includes, without limitation, altering a cable modem to change the downloading or uploading capacity of the cable modem.
- f. **IP Addresses:** Comcast will provide you with dynamic Internet protocol ("IP") address(es) as a component of the Service and these IP address(es) can and do change over time. You will not alter, modify, or tamper with these dynamic IP address(es) or those of any other customer. You agree not to use a dynamic domain name server or DNS to associate a host name with the dynamic IP address(es) for any commercial purpose. You also agree not to use any software on or in conjunction with any computer(s) or network device connected to the Service that provides for static IP address(es). If applicable, Comcast will release and/or recover the dynamic IP address(es) upon disconnection, discontinuance, or termination of the Service or this Agreement.
- g. **Theft of Service:** You will not connect the Service or any Comcast Equipment to more computers, either on or outside of the Premises, than are reflected in your account with us. You acknowledge that any unauthorized receipt of the Service constitutes theft of service, which is a violation of federal law and can result in both civil and criminal penalties. In addition, if the violations are willful and for commercial advantage or private financial gain, the penalties may be increased.

7. Termination and Expiration.

- a. **Term:** The term of this Agreement shall commence upon the installation of your Service, and shall continue on a month to month basis thereafter until terminated as provided for in this Agreement or until superceded by a revised Subscriber Agreement.
- b. **Termination by Customer:** You may terminate this Agreement for any reason at any time by providing Comcast with verbal or written notice of termination, in accordance with the terms of this Agreement. In the event of your termination, any applicable fees and charges will accrue through the date of termination but all prepaid monthly service fees for Service not received will be refunded (less any outstanding amounts due Comcast for equipment or other applicable fees and charges).
- c. **Termination by Comcast:** We may terminate this Agreement (i) at any time without prior notice if you fail to comply in full with any term of this Agreement, or (ii) for any other reason upon thirty (30) days notice to you. In the event Comcast terminates the Service for any reason other than your violation of this Agreement, any fees and charges will accrue through the date of termination but any prepaid monthly service fees for Service not received will be refunded (less any outstanding amounts due Comcast for equipment or other applicable fees and charges).
- d. **Customer Obligations Upon Termination. You agree that upon termination of this Agreement:**
 - i. You will immediately cease use of the Service and the Comcast Equipment, and uninstall and destroy all copies of any software provided to you pursuant to this Agreement or otherwise used by you to access the Service.

- ii. You will pay in full for your use of the Service and the Comcast Equipment up to the later of the effective date of termination of this Agreement or the date on which the Service is disconnected and the Comcast Equipment has been returned. You agree to pay on a pro-rated basis for any use by you of the Comcast Equipment or Service for a part of a month.
 - iii. You shall return the Comcast Equipment (including without limitation the modem if you are leasing a modem from Comcast) to Comcast, by any method reasonably requested by us, within 10 days after termination of the Agreement. Upon our request, you will permit us, and our employees, agents, contractors, and representatives, to access your premises during regular business hours to remove the Comcast Equipment and other material provided by Comcast. This removal will be conducted at an agreed to time; and you will ensure the return of all Comcast Equipment to Comcast. If any Comcast Equipment is not returned, you agree that Comcast may bill you for the charges referred to in Section 1(c) above, including without limitation charging you credit card if applicable.
- e. **Retention of Rights:** Nothing contained in this Agreement shall be construed to limit Comcast's rights and remedies available at law or in equity. Upon termination of this Agreement for any reason, Comcast and its suppliers reserve the right to delete all your data, files, electronic messages or other Customer information that is stored on Comcast's or its suppliers' servers or systems. In addition, you may forfeit your account user name and all e-mail, IP, and web space addresses. We shall have no liability whatsoever as the result of the loss of any such data, names or addresses.
- f. **Survival:** All representations, warranties, indemnifications and limitations of liability contained in this Agreement shall survive the termination of this Agreement, as well as any other obligations of the parties hereunder which, by their terms, would be expected to survive such termination or which relate to the period prior to termination.

8. Limitation of Liability; No Warranties; Warnings.

- a. **Limited Warranty:** THE COMCAST EQUIPMENT AND THE SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER COMCAST NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY CONNECTION TO, TRANSMISSION OVER, OR RESULTS OF THE COMCAST EQUIPMENT OR THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR WILL PROVIDE UNINTERRUPTED USE OR WILL OPERATE AS REQUIRED, UNINTERRUPTED, AT ANY MINIMUM SPEED, OR ERROR FREE. YOUR SOLE REMEDY FOR SERVICE INTERRUPTION SHALL BE LIMITED TO A PRORATED CREDIT UPON REQUEST ONLY IN THE EVENT OF COMPLETE FAILURE OF THE SERVICE DUE TO A TECHNICAL MALFUNCTION FOR TWENTY-FOUR (24) CONSECUTIVE HOURS OR MORE. TO QUALIFY FOR SUCH CREDIT, YOU MUST REQUEST THE CREDIT FROM COMCAST WITHIN THIRTY (30) DAYS OF THE FAILURE. CREDITS SHALL BE APPLIED ONLY AGAINST CURRENT AND FUTURE FEES PAYABLE BY YOU FOR THE SERVICE AND ANY CREDITS PROVIDED BY COMCAST ARE AT OUR SOLE DISCRETION AND IN NO EVENT SHALL CONSTITUTE OR BE CONSTRUED AS A COURSE OF CONDUCT BY COMCAST. NEITHER COMCAST NOR ITS AFFILIATES OR AGENTS WARRANT THAT ANY DATA OR FILES SENT BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF PERFORMANCE, NONINFRINGEMENT,

FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED.

- b. **Limitation of Liability:** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (INCLUDING WITHOUT LIMITATION TORT, CONTRACT, AND OTHERWISE), SHALL COMCAST OR ITS AFFILIATES OR AGENTS HAVE ANY LIABILITY TO CUSTOMER OR TO ANY PERSON OR ENTITY FOR (i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES AND PERSONAL INJURIES (INCLUDING DEATH), RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE INSTALLATION, SELF-INSTALLATION, MAINTENANCE, FAILURE, REMOVAL OR USE OF THE SERVICE OR THE COMCAST EQUIPMENT OR CUSTOMER'S RELIANCE ON OR USE OF THE COMCAST EQUIPMENT OR THE SERVICE, INCLUDING WITHOUT LIMITATION ANY MISTAKES, OMISSIONS, INTERRUPTIONS, COMPUTER OR OTHER HARDWARE OR SOFTWARE FAILURE OR MALFUNCTION, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, DELAYS IN TRANSMISSION, OR FAILURE OF PERFORMANCE OF THE COMCAST EQUIPMENT OR THE SERVICE; OR (ii) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE COMCAST EQUIPMENT OR THE SERVICE BY CUSTOMER OR ANY OTHER PERSON OR ENTITY INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.
- c. **No Liability For Viruses:** Comcast makes no representation or warranty that any software or content installed on your computer(s) or downloaded from the Service does not contain a virus or other harmful feature and it is your sole responsibility to take appropriate precautions to protect any computer or other hardware of yours from damage to its software, files or data as a result of any such virus or other harmful feature. We may, but are not required to, terminate all or any portion of the installation or operation of the Service if a virus is found to be present on your system. We are not required to provide you with any assistance in removal of the virus. If we decide, in our sole discretion, to install or run virus check software on your computer(s), we make no representation or warranty that the virus check software will detect or correct any or all viruses. You acknowledge that you may incur additional charges for any service call made or required on account of any problem related to a virus or other harmful feature detected on your system. NEITHER COMCAST NOR ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY HARDWARE, SOFTWARE, FILES OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.
- d. **Customer's Hardware and Software:** The installation, use, inspection, maintenance, repair and removal of the Comcast Equipment and certain Customer Equipment used in connection with the Service may result in service outage or potential damage to your computer(s) and other Customer Equipment. Except for gross negligence or willful misconduct by us, neither Comcast nor any of its affiliates and agents shall have any liability whatsoever for any damage, loss or destruction to the Customer Equipment (including without limitation your computer(s) and peripherals). In the event of such gross negligence or willful misconduct by Comcast, at our sole discretion we shall pay for the

repair or replacement of the damaged parts up to a maximum of \$1,000 and this shall be your sole remedy relating to such activity. In addition, as part of the installation process for the software and other components of the Service, system files on your computer may be modified. Comcast does not represent, warrant or covenant that these modifications will not disrupt the normal operations of any Customer Equipment including without limitation your computer(s), or cause the loss of files. FOR THESE AND OTHER REASONS, IT IS RECOMMENDED THAT YOU BACK-UP ALL FILES TO ANOTHER STORAGE MECHANISM PRIOR TO SUCH ACTIVITIES. YOU UNDERSTAND AND ACCEPT THE ASSOCIATED RISKS OF ANY DECISION BY YOU NOT TO DO SO. NEITHER COMCAST NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA. In addition, the opening of your computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. You understand that your computer may need to be opened, either by you or by us or our agents, in connection with the installation or repair of the Service. NEITHER COMCAST NOR ANY OF ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

- e. **Not Liable For Third Parties:** You acknowledge that we may use the services, equipment and infrastructure and content of others in providing the Service and that third parties may provide components of the Service. We are not responsible for the performance (or non-performance) of such services, equipment, infrastructure or content of others whether or not they constitute components of the Service. In addition, you understand that you will have access to the services and content of third parties through the Service, including without limitation that provided by content providers (whether or not accessible directly from the Service). Services, equipment, infrastructure and content that are not provided by us (even if they are components of the Service) are not the responsibility of Comcast, and we shall have no liability with respect to such services, equipment, infrastructure and content. You should address questions or concerns relating to such services, equipment, infrastructure and content to the creators of such services, equipment, infrastructure and content. We do not endorse or warrant any third-party products, services or content that are distributed or advertised over the Service. No undertaking, representation or warranty made by an agent or employee of Comcast or our underlying third party providers in connection with the installation, maintenance, or provision of the Service which is inconsistent with the terms of this Agreement shall be binding on Comcast. The limitations of liability set forth in Section 8(b) apply to the acts, omissions, and negligence of Comcast and its underlying third party providers (and their respective officers, employees, agents, contractors or representatives) which, but for that provision, would give rise to a cause of action in contract, tort or any other legal doctrine.
- f. **Customer Responsibility for Content:** You acknowledge that there is some content and material on the Internet or otherwise available through the Service which may be offensive to some individuals, may be unsuitable for children, may violate federal, state or local laws, rules or regulations or may violate your protected rights or those of others. We assume no responsibility for this content or material. All content and material accessed by you or others through the Service is accessed and used by you or such others at their own risk, and neither Comcast nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to access to such content or material by you or others. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs claiming to be capable of restricting access to sexually explicit material on the Internet are commercially available. We make no representation or warranty regarding the effectiveness of such programs.

- g. **Monitoring of Postings and Transmissions:** Comcast shall have no obligation to monitor postings or transmissions made in connection with the Service. However, you acknowledge and agree that Comcast and its agents shall have the right to monitor any such postings and transmissions, including without limitation e-mail, newsgroups, chat, IP audio and video, and web space content, from time to time and to use and disclose them in accordance with Sections 4 and 5 of this Agreement, and as otherwise required by law or government request. We reserve the right to refuse to upload, post, publish, transmit or store any information or materials, in whole or in part, that, in our sole discretion, is unacceptable, undesirable or in violation of this Agreement.
- h. **Eavesdropping:** Our facilities are used by numerous persons or entities including, without limitation, other subscribers to the Service. As a result, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of the Service. This risk of eavesdropping exists not only with our facilities, but also on the Internet and other services to which access is provided as a part of the Service. Any sensitive or confidential information posted, stored, transmitted or disseminated by you is done so at your sole risk, and neither Comcast nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such actions by you. You acknowledge that software programs claiming to be capable of encryption are commercially available. We make no representation or warranty regarding the effectiveness of these programs.
- i. **FTP/HTTP Service Setup:** You acknowledge that when using the Service there are certain applications such as FTP (File Transfer Protocol) or HTTP (Hyper Text Transfer Protocol) which may be used by other persons or entities to allow such other persons or entities to gain access to Customer's Equipment. You are solely responsible for the security of the Customer Equipment or any other equipment you choose to use in connection with the Service, including without limitation any data stored on such equipment. Neither Comcast nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to the use of such applications by you, or the access by others to the Customer Equipment or other equipment of yours.
- j. **File and Print Sharing:** The Service functions in some ways as a Local Area Network (LAN) with each Customer constituting a node on the network. As such, users outside of the Premises may be able to access the Customer Equipment and other equipment connected in some way to the Customer Equipment. In addition, some available software includes capabilities that will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, and to the software, files and data stored on such equipment. For example, operating systems such as Windows and Macintosh include file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Customer Equipment and other equipment connected in some way to the Customer Equipment, even if you are not using the Service. Unless you are subject to a Service plan that expressly provides otherwise, we recommend that you connect only a single computer to the Service and that you disable file and print sharing and other capabilities that allow outside users to gain access to the Customer Equipment. You acknowledge that if you choose to run these applications, you should take appropriate security measures, and that any failure by you to follow this recommendation is at your sole risk. Neither Comcast nor its affiliates or agents shall have any liability whatsoever for any claims, losses, actions, damages, suits or proceedings resulting from, arising out of or otherwise relating to access by others of the Customer Equipment or any other equipment connected in some way to the Customer Equipment, or to the software, files and data stored on such equipment.

- k. **High Risk Activities:** The Service is not fail-safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to severe injury to business, persons, property or environment ("High Risk Activities"). These High Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risks of any damages resulting from High Risk Activities.
- l. **Facilities Allocation:** Comcast reserves the right to determine, in its discretion, and on an ongoing basis, the nature and extent of its facilities allocated to support the Service, including, but not limited to, the amount of bandwidth to be utilized and delivered in conjunction with the Service.
- m. **Cookies:** You acknowledge that accessing certain web sites through the Service may result in a "cookie" being placed on your computer system. Cookies are small files stored on a computer's hard drive to simplify and improve a user's Web experience. It is your responsibility to disable or restrict the placement of cookies through whatever procedures are available on your browser if you don't want them placed on your computer system.
- n. **Sole Remedy:** Your sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Some states do not allow the exclusion or limitation of implied warranties, and some states do not allow the limitations or exclusion of incidental or consequential damages, so certain of the above exclusions may not apply. In such states, the liability of Comcast and its affiliates and agents is limited to the maximum extent permitted by law.

9. Mandatory and Binding Arbitration.

- a. **Binding Arbitration:** If you and Comcast are unable to resolve informally any claim or dispute related to or arising out of this Agreement or the services provided, you and Comcast agree to binding arbitration except as provided below. You must contact us within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute (except for billing disputes which are subject to Section 3), or you waive the right to pursue a claim based upon such event, facts or dispute.
- b. **Parties:** All parties to the arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other subscribers, or other persons similarly situated unless your state's laws provide otherwise.
- c. **Arbitration Services and Procedures:** You may select the service to arbitrate the dispute. Please refer to the Arbitration Supplement that is attached to this Agreement as Exhibit B (or contact your Comcast local office) for more information on the various arbitration services and other important terms and conditions. The arbitration will take place at a location, convenient to you, in the area where you receive service from us. Comcast will advance all reasonable arbitration filing fees and arbitrator's costs and expenses, except that YOU ARE RESPONSIBLE FOR ALL COSTS THAT YOU INCUR IN THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESSES OR ATTORNEYS. IF THE ARBITRATION IS DECIDED IN COMCAST'S FAVOR, YOU AGREE TO REIMBURSE COMCAST FOR ALL FILING FEES, COSTS AND EXPENSES ADVANCED. You and Comcast agree that a single arbitrator will resolve the dispute. Moreover, participating in arbitration may result in limited discovery.

- d. **Exclusions from Arbitration:** You and Comcast agree that the following will not be subject to arbitration: (1) any claim filed by Comcast to collect outstanding balances for unpaid service or the theft of any service or equipment; (2) any dispute over validity of either party's intellectual property rights or our licenses to operate our business; and (3) any dispute involving violations of 47 U.S.C. § 551 or 18 U.S.C. §§ 2510-2521.

10. Miscellaneous

- a. **Contacting Us:** For any inquiries or notices required in connection with this Agreement, you may contact us via e-mail at <http://online.comcast.net/contactus/> (or such other e-mail address as Comcast may designate) or in writing to Comcast High-Speed Internet, Attn: Customer Service, 1500 Market Street, Philadelphia, PA 19102-2148.
- b. **Notice:** Comcast may deliver any required or desired notice to you by posting it on the Service's web site at www.comcast.net or on another web site about which you have been notified, or by sending notice via e-mail, first class U.S. postal mail, or overnight mail to your physical address of record or the e-mail address on Comcast's account records. You agree that any one of the foregoing will constitute sufficient notice. Because we may from time to time notify you about important information regarding the Service and the Agreement by these methods, you agree to regularly check your postal mail, e-mail and all postings on the Service's web site at www.comcast.net or on another web site about which you have been notified and bear the risk of failing to do so.
- c. **Changes to the Service and the Agreement:** Comcast may, in its sole discretion, change, add to or remove portions of the Service (including without limitation content, functionality, hours of availability, equipment requirements, speed, and upstream and downstream rate limitations) at any time without notice. In addition, we may modify this Agreement at any time in our sole discretion upon thirty (30) days prior notice to you. We will notify you of any such modifications as set forth in Section 10(b) above. You agree that any one of the foregoing will constitute sufficient notice of these changes. Your continued use of the Service following notice of these changes shall be deemed to be your acceptance of any the changes. If you do not agree to any changes, you must immediately stop using the Service and notify Comcast that you are terminating this Agreement. You will then be entitled to a refund of any unused portion of any monthly service fee for the Service that has been paid by you in advance (less any outstanding amounts due Comcast for equipment or other applicable fees and charges).
- d. **No Relationship:** Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchisor, employer-employee or principal-agent relationship between Comcast, any content, backbone, network, circuit and other technology or communications providers, software and other licensors, hardware and equipment suppliers or other third party providers of elements of the Service, nor impose upon any such companies any obligations for any losses, debts or other obligations incurred by the other.
- e. **Assignment:** Comcast may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of Comcast, (ii) to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of Comcast or any affiliate of Comcast, or (iii) to any person or entity purchasing or otherwise acquiring the Comcast system serving the Premises. This Agreement may not be assigned or transferred by Customer without Comcast's prior consent.
- f. **General:** This Agreement and all exhibits hereto constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement, and supersede and replace any and all prior written or verbal agreements. In the event

that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. Comcast's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

Revised and effective: January 2003

EXHIBIT A

Comcast Software License Agreement

IMPORTANT--READ CAREFULLY: BY USING THE SOFTWARE PROVIDED TO YOU IN CONNECTION WITH THE COMCAST HIGH-SPEED INTERNET SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS SOFTWARE LICENSE AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS.

1. Grant of Limited License

- a. The operating company subsidiary of Comcast Corporation that owns and/or operates the cable television system in your area pursuant to a cable television franchise with the local franchising authority, or its affiliate, ("Comcast") grants you (which for purposes of this Software License Agreement shall include members of your immediate household for whom you will be responsible hereunder), without additional fee or charge to you, a nonexclusive limited, personal and non-transferable license, with restrictions as described below, to use the software program, in object code only, provided to you in connection with the Comcast High-Speed Internet service (the "Software"), which includes any documentation accompanying the Software, for the sole purpose of using the Comcast High-Speed Internet service, and to make one (1) backup copy of the Software, provided that (i) the Software is installed on only the number of personal computers authorized by Comcast (which number shall be one (1) unless otherwise agreed to by Comcast), (ii) the Software may NOT be modified; (iii) all copyright notices are maintained on the Software; and (iv) you agree to be bound by all the terms of this Software License Agreement. The Software License Agreement is only for your own personal, non-commercial use and not for use in the operation of a business or service bureau or for the benefit of any other person or entity.

2. No Ownership Rights

- a. You have no ownership rights in the Software. Rather, you have a limited license to use the Software as long as this Software License Agreement remains in full force and effect. Ownership of the Software and all intellectual property rights therein shall remain at all times with Comcast and/or its licensors. Any use of the Software by any other person, business, corporation, government organization or any other entity is strictly forbidden and is a violation of this Software License Agreement.

3. Third Party Software

- a. There are software programs contained within the Software that have been licensed to Comcast by third parties. The term "Software" as used herein shall refer to such third party software except where the term Software refers expressly to the ownership or other specific rights of Comcast. The same terms and conditions, including all limitations and restrictions, set forth in this Software License Agreement apply to each third party software program contained in the Software.

4. Intellectual Property

- a. The Software contains material that is protected by United States Copyright Law and trade secret law, and by international treaty provisions. All rights not specifically granted to you herein are reserved to Comcast and to any third party with ownership rights in the Software and documentation used in the Software. You may not remove any proprietary notice of Comcast or any other party from any copy of the Software or documentation.

5. Restrictions and Requirements

- a. This Software License Agreement is your proof of license to exercise the rights granted herein. In order to satisfy your obligations hereunder and to maintain the confidentiality of the Software, you must take reasonable steps to protect the Software consistent with the license restrictions set forth herein and Comcast's and other third parties' ownership rights in the Software, including informing anyone permitted access to your computer and the Software about such restrictions on the use of the Software.
- b. As a condition of the limited license for the Software you may not: (i) publish, display, disclose, rent, lease, modify, loan, distribute, or create derivative works based on the Software or any part thereof; (ii) reverse engineer, decompile, translate, adapt, disassemble or otherwise reduce the Software to human readable form; (iii) attempt to create the source code from the object code for the Software; (iv) transmit the Software over any network or between any devices, although you may use the Software to make such transmissions of other materials; (v) make any third party software contained in the Software a stand-alone product; (vi) take any action that will infringe on the intellectual property or other proprietary rights of Comcast or any third party software provider; or (vii) sublicense, rent, lease, or assign the Software. You may transfer the Software to other computers you own as long as you only use it on only the number of computers authorized by Comcast.
- c. If Comcast informs you, by any method described in the Comcast High-Speed Internet Subscriber Agreement to which this Software License Agreement is attached (the "Subscriber Agreement"), that any enhancements or upgrades are available for the Software, or that the Software otherwise is being modified by Comcast, you will take prompt action to download such enhancements, upgrades or changes, or otherwise obtain such enhancements, upgrades or changes in the manner directed by Comcast, within the time frame stated in the notice. If you fail to do so, you acknowledge that the Software may not work correctly or that you will not be able to take advantage of all available features of the Software after the stated period in the notice.
- d. You have the obligation to protect yourself and minimize any damages you might suffer if the Software or any portion thereof, has a defect or fails for any reason.

6. Disclaimer of Warranties

- a. The Software is provided "AS IS." To the maximum extent permitted by law, Comcast makes NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. Additionally, Comcast makes NO WARRANTIES with respect to lack of viruses, accuracy or completeness of responses, results or lack of negligence, correspondence to description, warranty of title or non-infringement. Comcast does NOT WARRANT that the functions contained in the Software will meet any requirements or needs you may have, or that the Software will operate error free, or in an uninterrupted fashion, or that any defects or errors in the Software will be corrected, or that the Software is compatible with any particular platform.

Comcast reserves the right to modify the Software at any time. Comcast is not obligated to provide any updates to the Software. Any use by you of the Software is at your own risk.

7. Limitation of Liability and Damages

- a. You assume full and complete responsibility and liability for your use of the Software. Except as specifically provided in the Subscriber Agreement, IN NO EVENT WILL COMCAST BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES OR LOSS OF BUSINESS INFORMATION OR OTHER DATA) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF COMCAST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. (Certain laws in some states do not allow the exclusion of implied warranties or the limitation of certain damages. If such laws apply, certain of the exclusions or limitations in this Software License Agreement may not be applicable to you.)

8. Export Restrictions

- a. This Software License agreement is expressly made subject to any laws, regulations, orders, or other restrictions on the export from the United States of America of the Software or information about such Software that may be imposed from time to time by the government of the United States of America. You shall not export the Software, or any portion thereof, or information about the Software without consent of Comcast and compliance with such laws, regulations, orders, or other restrictions.

9. Termination

- a. This Software License Agreement is effective only during the term of the Subscriber Agreement and shall terminate upon any termination of the Subscriber Agreement. You may terminate this Software License Agreement at any time by destroying or returning to Comcast all copies of the Software and associated documentation in your possession or under your control and terminating the Subscriber Agreement. This Software License Agreement will terminate: (i) at any time that the Subscriber Agreement is terminated or (ii) if Comcast finds that you have violated any of the terms of this Software License Agreement. Upon termination, you agree to destroy or return to Comcast all copies of the Software and documentation and, upon Comcast's request, to certify in writing that all known copies, including backup copies, have been destroyed. No waiver of any breach of any provision of this Software License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless it is made in writing and is signed by an authorized representative of the waiving party. All provisions relating to confidentiality, proprietary rights, and nondisclosure shall survive the termination of this Software License Agreement.

10. General

- a. Disputes under this Software License Agreement shall be construed, interpreted and governed in accordance with Section 9 of the Subscriber Agreement.

- b. Comcast may modify the Software or this Software License Agreement at any time in its sole discretion upon notice to you. Comcast will notify you of any such modifications as provided in the Subscriber Agreement. Customer agrees that any methods set forth therein will constitute sufficient notice of any change to this Software License Agreement. Your continued use of the Software following notice of such change shall be deemed to be your acceptance of any such change. If you do not agree to any such change, you must immediately stop using the Software and notify Comcast that you are terminating this Software License Agreement and the Subscriber Agreement.
- c. Comcast may assign its rights and obligations under this Agreement, without notice, to (i) any affiliate of Comcast, (ii) to any party (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of Comcast or any affiliate of Comcast, or (iii) to any person or entity purchasing or otherwise acquiring the Comcast system serving the Premises (as defined in the Subscriber Agreement).
- d. This Software License Agreement and the Subscriber Agreement shall constitute the entire Agreement between the parties hereto. If any part of this Software License Agreement is found invalid or unenforceable, the remainder of this Software License Agreement shall remain in full force and effect and shall be interpreted so as to reasonably give effect to the intention of the parties.

EXHIBIT B
ARBITRATION SUPPLEMENT

1. If you have a dispute with Comcast that cannot be resolved through the informal dispute resolution process, you and Comcast have agreed to arbitrate all disputes as provided for in Section 9 of the Comcast High-Speed Internet Subscriber Agreement (the "Agreement"). Arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court by a judge or jury.
2. Since the services provided to you concern interstate commerce, the Federal Arbitration Act, not state law, shall govern the arbitrability of all disputes covered by this Agreement. However, applicable federal law or the law of your state where you receive our services will apply to and govern the substance of any disputes.
3. You should know that participating in arbitration may result in limited discovery depending on the rules of the arbitration organization that you elect to resolve the dispute.
4. As the first step in the arbitration process, you should select an arbitration organization from the choices below to preside over your dispute with Comcast:

a. American Arbitration Association ("AAA")

335 Madison Ave., Floor 10
New York NY 10017-4605
1-800-778-7879
www.adr.org

AAA will apply the Supplementary Procedures for Consumer-Related Disputes and the Consumer Dispute Resolution Procedures in arbitrating claims between you and Comcast.

b. Judicial Arbitration & Mediation Service ("JAMS")

1920 Main Street, Suite 300
Irvine, CA 92614
(949) 224-1810
www.jamsadr.com

JAMS will arbitrate your dispute with Comcast under either the Streamlined Arbitration Rules & Procedures or the Comprehensive Arbitration Rules & Procedures, depending on the amount of the claim in dispute.

c. **National Arbitration Forum ("NAF")**

P.O. Box 50191
Minneapolis, MN 55405-0191
1-800-474-2371
www.arbitration-forum.com

NAF will resolve all disputes brought before it using the NAF Code of Procedures.

5. If there is a conflict between the rules provided for in the Agreement between you and Comcast and the rules of the arbitration organization you elect, the rules contained in the Agreement shall govern. Unless there is such a conflict, the arbitrator will be selected and conduct the proceedings in accordance with the rules of the service that you elect to arbitrate the dispute.

6. The location of the arbitration proceeding will be designated by the organization elected from the choices provided in paragraph 4, above.

7. The arbitrator will apply applicable statutes of limitation (as modified by the Agreement), will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information, including the use of protective orders to prohibit disclosure outside the arbitration, if requested to do so by you or Comcast.

8. The arbitrator will make any award in writing, but need not provide a statement of reasons unless requested by a party. Upon a request by you or us, the arbitrator will provide a brief statement of the reasons for the award. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties.

9. In the event that a court were to determine that the arbitration provision found in the Agreement is unenforceable for any reason, you and Comcast have each agreed to waive, to the fullest extent allowed by law, any trial by jury or the right to bring any claims on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other subscribers, or other persons similarly situated.